

Attachment A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

MAY 12 2021

U.S. DISTRICT COURT-WVND
WHEELING, WV 26003

Michael Ray Fortuna

Your full name

FEDERAL CIVIL RIGHTS
COMPLAINT
(BIVENS ACTION)

v.

Civil Action No.: 5:21-CV-72
(To be assigned by the Clerk of Court)

FBOP And warden

Hudgins, De Anderson,

P.A. Wilson, Nurse Brehmer

Bailey
Mazzone
Blalock

Enter above the full name of defendant(s) in this action

I. JURISDICTION

This is a civil action brought pursuant to **Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)**. The Court has jurisdiction over this action pursuant to Title 28 U.S.C. §§ 1331 and 2201.

II. PARTIES

In Item A below, place your full name, inmate number, place of detention, and complete mailing address in the space provided.

A. Name of Plaintiff: Michael A. Fortuna Inmate No.: 11027-088
Address: P.O. Box 85 Peach Creek, WV 25639
ECI Gilmer camp PO Box 6000 Glenville, WV 26351

In Item B below, place the full name of each defendant, his or her official position, place of employment, and address in the space provided.

Attachment A

B. Name of Defendant: Hudgins
 Position: warden
 Place of Employment: FCT Gilmer
 Address: Gilmer camp PO BOX 6000 Glenville,
WV 26351

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☒ Yes ☐ No

If your answer is "YES," briefly explain: Mr. Hudgins
is the warden of the prison and has the posse

B.1 Name of Defendant: Dr. Anderson
 Position: Doctor at medical services
 Place of Employment: FCT Gilmer
 Address: Gilmer camp PO Box 6000 Gilmerville,
WV 26351

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☒ Yes ☐ No

If your answer is "YES," briefly explain: Dr Anderson knew
i had a bottom bunk pass and he also knew
about all of my injuries and i ask him to move
me from the top bunk to the bottom bunk but he
never did

B.2 Name of Defendant: Mrs. Wilson
 Position: Physicians Assistant
 Place of Employment: FCT Gilmer
 Address: Gilmer camp PO Box 6000 Glenville,
WV 26351

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☒ Yes ☐ No

Attachment A

If your answer is "YES," briefly explain: Mrs Wilson knew
i was suppose to be on a bottom bunk also.

B.3 Name of Defendant: Nurse Brehmur
 Position: Nurse at medical services
 Place of Employment: FCI Gilmer
 Address: Gilmer Camp P.O. Box 6000 Glenville,
WV 26351

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☒ Yes ☐ No

If your answer is "YES," briefly explain: I told Mr. Brehmur
i was on a top bunk and needed moved to the
bottom bunk because i had a bottom bunk pass
but he did nothing and after i fell and came back
from the hospital i was put back on the top bunk for
another 6 days before being moved to the bottom bunk.

B.4 Name of Defendant: _____
 Position: _____
 Place of Employment: _____
 Address: _____

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☐ Yes ☐ No

If your answer is "YES," briefly explain: _____

Attachment A

B.5 Name of Defendant: _____
Position: _____
Place of Employment: _____
Address: _____

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☐ Yes ☐ No

If your answer is "YES," briefly explain: _____

III. PLACE OF PRESENT CONFINEMENT

Name of Prison/ Institution: FCT Gilmer Camp

A. Is this where the events concerning your complaint took place?
☒ Yes ☐ No

If you answered "NO," where did the events occur?

B. Is there a prisoner grievance procedure in the institution where the events occurred? ☐ Yes ☐ No

C. Did you file a grievance concerning the facts relating to this complaint in the prisoner grievance procedure?
☒ Yes ☐ No

D. If your answer is "NO," explain why not: I have done all of the Grievance Process and i put them in this paperwork to the court.

E. If your answer is "YES," identify the administrative grievance procedure number(s) in which the claims raised in this complaint were addressed

Attachment A

and state the result at level one, level two, and level three. **ATTACH GRIEVANCES AND RESPONSES:**

LEVEL 1 BP-8 — BP-9

LEVEL 2 BP-10

LEVEL 3 BP-11

IV. PREVIOUS LAWSUITS AND ADMINISTRATIVE REMEDIES

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action? ☐ Yes ☐ No

B. If your answer is "YES", describe each lawsuit in the space below. If there is more than one lawsuit, describe additional lawsuits using the same format on a separate piece of paper which you should attach and label: "IV PREVIOUS LAWSUITS"

1. Parties to this previous lawsuit:

Plaintiff(s): Michael Ray Fortuna

Defendant(s): FBOP Mr Hendrix, Mrs. Hoffman, Mrs. Shafer
Mrs. Kegan, Mrs. Corbin

2. Court: US District Court Clarksburg WV
(If federal court, name the district; if state court, name the county)

3. Case Number: 119 cv 3

4. Basic Claim Made/Issues Raised: my shoulder and Arm
was injured at FCI Morgantown and the
warden stoped my medical treatment,

5. Name of Judge(s) to whom case was assigned:

The Honorable Judge Kleeck

6. Disposition: _____
(For example, was the case dismissed? Appealed? Pending?)

7. Approximate date of filing lawsuit: Jan 1. 2018

Attachment A

8. Approximate date of disposition. Attach Copies: Jan 1 2018

C. Did you seek informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part B?

☒ Yes ☐ No

D. If your answer is "YES," briefly describe how relief was sought and the result. If your answer is "NO," explain why administrative relief was not sought.

I filed all of the Administrative Remedies but
the prison never helped me nor did the medical
staff do anything for me.

E. Did you exhaust available administrative remedies?

☒ Yes ☐ No

F. If your answer is "YES," briefly explain the steps taken and attach proof of exhaustion. If your answer is "NO," briefly explain why administrative remedies were not exhausted.

I wrote cap-outs to the medical staff asking them
to help me, then I filed a BP-8 to medical then a
BP-9 to the warden then a BP-10 to the Regional
office then a BP-11 to central office then I
filed the lawsuit.

G. If you are requesting to proceed in this action *in forma pauperis* under 28 U.S.C. § 1915, list each civil action or appeal you filed in any court of the United States while you were incarcerated or detained in any facility that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. Describe each civil action or appeal. If there is more than one civil action or appeal, describe the additional civil actions or appeals using the same format on a separate sheet of paper which you should attach and label "G. PREVIOUSLY DISMISSED ACTIONS OR APPEALS"

1. Parties to previous lawsuit:

Attachment A

Plaintiff(s): Michael Ray Fortuna

Defendant(s): _____

2. Name and location of court and case number:

US District Court Clarksburg, WV
Case # 119-CV3

3. Grounds for dismissal: ☐ frivolous ☐ malicious
☐ failure to state a claim upon which relief may be granted

4. Approximate date of filing lawsuit: Jan 1 2018

5. Approximate date of disposition: Jan 1 2018

V. STATEMENT OF CLAIM

State here, as **BRIEFLY** as possible, the facts of your case. Describe what each defendant did to violate your constitutional rights. **You must include allegations of specific wrongful conduct as to EACH and EVERY defendant in the complaint.** Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, you must number and set forth each claim in a separate paragraph. **UNRELATED CLAIMS MUST BE RAISED IN SEPARATE COMPLAINTS WITH ADDITIONAL FILING FEES. NO MORE THAN FIVE (5) TYPED OR TEN (10) NEATLY PRINTED PAGES MAY BE ATTACHED TO THIS COMPLAINT. (LR PL 3.4.4)**

CLAIM 1: Warden Hudgins is the overseer of the
staff at Gilmer camp.

Supporting Facts: Warden Hudgins is the boss of the prison.

Attachment A

CLAIM 2: Dr. Anderson knew i was suppose to be on a bottom bunk but he didnt move me until after i filed a BP-8

Supporting Facts: I fell and hurt myself and im still having a lot of physical problems and mental problems because of the pain i live with everyday. Dr. Anderson knew i had a pin in my former bone and drop foot with numbness in my foot and a shoulder and arm injury and ive had back surgery and this info is in my medical records with my bottom bunk pass.

CLAIM 3: PA. Wilson also knew i was suppose to be on a bottom bunk and she put this in writing thats in my paper work and she also know about all of my medical problems at least 2 to 3 months before i got to Gilmer Camp and i should have been put on a bottom bunk when i first got there on June 4th 2019.

Supporting Facts: PA. Wilson had my medical records and knew i had a bottom bunk pass but she never moved me even after i ask her and Dr. Anderson several times and several nurses to be moved and even after i fell i was put back on the top bunk for 6 more days and had to file a BP-8 before i was finally moved.

CLAIM 4: Nurse Brehmur come to me while i was laying in the floor on Aug 17th the day i fell and did nothing to help me, the inmates kept telling him to call me an ambulance and he took his time knowing i was hurt and was knocked unconscious and has a head injury and other injuries

Supporting Facts: Nurse Brehmur put me back on the top bunk after i come back from the hospital

Attachment A

with a head injury and left me on the top
bunk for 6 more days.

CLAIM 5:

Supporting Facts:

VI. INJURY

Describe **BRIEFLY** and **SPECIFICALLY** how you have been injured and the exact nature of your damages.

I fell climbing into the top bunk and hurt my right shoulder
my lower back, my neck, my hip, and I have blurry
vision in my right eye, my shoulder was injured in 2017
and my lower back in 1993 but my hip, neck, and eye are
new injuries.

VII. RELIEF

State **BRIEFLY** and **EXACTLY** what you want the Court to do for you. Make no legal arguments. Cite no cases or statutes.

I want medical treatment for life for all of my injuries. I want
50 million for pain and suffering, future pain and suffering, future
lost wages and earnings, mental distress and pain for now and in the
future and for the quality of life that I have to live with
from now on due to my injuries, 45 million in punitive damages
for the life I have to live now and in the future and for
not being able to enjoy life with my grandkids and for not
being able to open a business and I want \$5.00.00 dollars a day for
the rest of my life for physical and emotional distress and pain
and suffering that I'll have to live with until I die.

Attachment A

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the plaintiff in the above action, that he/she has read the above complaint and that the information contained in the complaint is true and accurate. Title 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at my Home on 5-8-21.
(Location) (Date)

Michael Ray Fortune
Your Signature